**THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

**WRIT PETTION NO.22261 OF 2002**

-

**BETWEEN:**

Hyder Khan son of Julfu Khan

…Petitioner

vs.

The Depot Manager, APSRTC, Nirmal and two others.

..Respondents

**THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

**WRIT PETTION NO.22261 OF 2002**

**ORAL ORDER**

The writ petition is directed against the award of the Labour Court, Godvarikhani, Karimnagar District dated 05-10-1991 in I.D.625 of 1989.

The petitioner was employed as a driver by the A.P.S.R.T.C. While he was driving the employers' bus on 24-05-1988 the vehicle was allegedly stopped at Gudegoan village. The management issued a charge sheet on 08-06-1988 setting out three articles of charge. (a) that the petitioner had driven the vehicle bearing No.AAZ 7531 in a wholly intoxicated condition while taking the bus from Pardi(B) village to Gudegoan on 24-05-1988 causing potential danger to lives of the passengers; (b) for having detained the vehicle at Gundegoan village on account of his wholly intoxicated condition causing great inconvenience to the passengers in the bus; and (c) for damaging the image of the employer. All these conduct were alleged as constituting misconduct in terms of the relevant provisions of the A.P.S.R.T.C Employees(Conduct) Regulations 1963. After a due process of domestic enquiry the petitioner was visited with the penalty of removal from service, by the order dated 02-03-1989 of the disciplinary authority.

Assailing the order of removal the petitioner instituted I.D.No.625 of 1989 under Section. 2A(2) of the Industrial Disputes Act,1947( for short "the Act"). By an order dated 05-09-1999 on a preliminary point raised by the petitioner, the labour Court had found the domestic enquiry to be valid.

Considering the merits of the petitioner's challenge, the labour Court found on an analysis of the record of the domestic enquiry that there was cogent and adequate evidence for the conclusion in the domestic enquiry as to the petitioner's intoxication during the course of duty and for the finding that he was driving the bus in a wholly intoxicated condition endangering the lives of the passengers. The labour Court also found (on the basis of the evidence on record) that when the bus was going from Gudegoan to Pardi(B) village the petitioner went to nearby hotel,

stayed there for 20 minutes and when he came back was found highly intoxicated, unable even to speak and in that condition he drove the bus in a zig zag manner with considerable difficulty to Gudegoan. The passengers then stopped the petitioner from proceeding further as there was every likelihood of danger to their lives. The bus was stopped at Gudegoan. The passengers had been forced to sleep in the bus overnight and only on the next day morning i.e., 25-05-1988 the bus again started to Bhainsa at 5.00 A.M. Even the conductor, a fellow employee of the petitioner, testified against him. The petitioner's defence-explanation in the domestic enquiry that he stopped the bus at Gudegoan village because he was earlier preoccupied with the marriage of his relatives and was deeply exhausted did not cut the ice either in the domestic enquiry or before the Labour Court.

The Labour Court on a careful and focused analysis of the record of the domestic enquiry, found the conclusion as to the petitioner's guilt to have been validly established and affirmed the same. However, the Labour Court, purportedly in exercise of its discretion Under Section 11-A of the Act, considered it appropriate to modify the penalty of removal from service to one of fresh appointment to a lower post of cleaner and to treat the entire period the petitioner was out of the service (from the date of his removal from service to till date of his reinstatement) as a period for which he is not entitled to any back wages or other attendant benefits. The Labour Court made it clear that the petitioner shall be entitled to salary as though he was freshly appointed as a cleaner. This substituted penalty was ordered by the Labour Court on the ground that the bus did not meet with an accident notwithstanding the intoxication of the petitioner. The benefit of this providence was given by the Labour Court to the petitioner. Since A.P.S.R.T.C has chosen in its administrative wisdom not to prefer an appeal, this Court comments not upon this exercise of discretion by the Labour Court infavour of the petitioner.

Sri Sadu Rajeswara Reddy, learned counsel for the petitioner vehemently and strenuously contends that the substituted punishment of fresh appointment as a cleaner imposed on the petitioner by the award of the Labour is grossly disproportionate to the misconduct found against the petitioner. This is a contention that is stated to be rejected. The petitioner was holding the position of driver in A.P.S.R.T.C. and was conducting passengers while driving the bus in wholly intoxicated condition. He thereby gravely endangered the lives of the passengers by his wholly careless and grossly irresponsible conduct. The bus was also stopped

overnight at Gundegaon on account of the petitioner's inability to perform his duties on account of intoxication. The passengers were thereby substantially inconvenienced and the reputation of a public Corporation i.e., A.P.S.R.T.C severely compromised by the petitioner's conduct.

The learned counsel for the petitioner cites a decision of a Division Bench of Punjab and Haryana High Court in ***Mohinder Ram and another Vs. F.C.I. and others (),*** in support of his contention that the punishment of fresh appointment as a cleaner imposed on petitioner is grossly disproportionate and therefore arbitrary vis-à-vis the misconduct found against the petitioner. In the case cited, the Punjab and Haryana High Court considered a fact situation where the petitioners were reduced in rank for a period of eight (8) years and after the expiry of the period of reduction claimed restoration to the posts from which they had been reduced in rank. Responding to the petitioner's claim the F.C.I-employer contended before the High Court that the petitioners were not entitled to claim automatic restoration to the posts from which they were reverted, on completion of the eight years period of punishment. It was also contended that several vigilance cases were pending against the petitioners on account of which they could not be promoted. In the context of the said fact situation, the Punjab and Haryana High Court held that as the petitioners had been reduced in rank only for the specific period of eight years, on expiry of the said period were entitled to be restored to the posts from which they had been reduced in rank as a measure of punishment; they could not be further punished on the basis of the aforesaid order. This decision is inapposite for the case on hand. The Labour Court in this case had directed the appointment of the petitioner afresh as a cleaner without any benefit of past service. The termination of the petitioner from the post of driver was therefore affirmed with that extent. The petitioner has not been reverted from the post of driver to that of a cleaner by the order of the Labour Court and for any specified period. The judgment of the Punjab and Haryana High Court is therefore not applicable to the facts in this case. The Labour Court itself was overly lenient to the petitioner. The petitioner is not entitled to any further relief. There are no merits in this writ petition.

The writ petition is accordingly dismissed. No order as to costs.

_____

**GODA RAGHURAM,J**

28TH OCTOBER 2005

*TSNR